

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
WESTERN DIVISION

(Cite as 24 D. o. E. App. Dec. 120)

STEVE & STACY SCHULIZ,
Individually and by and
on behalf of SAMUEL
SCHULIZ, a child,

Plaintiffs,

No. 1-05-cv-25-CRW-RAW

VS

JUDICIAL REVIEW DECISION

THE LEWIS CENTRAL
COMMUNITY SCHOOL DISTRICT,
THE LOESS HILLS AREA
EDUCATION AGENCY, &
THE IOWA DEPARTMENT OF
EDUCATION,

Defendants.

Plaintiffs Steve and Stacey Schultz (the Schultzes), individually and by and on behalf of Samuel Schultz, a child (Sam) appeal from the May 27, 2005 ALJ decision of the Iowa Department of Education (agency) denying their claim for reimbursement of educational expenses for Sam. The court affirms the ALJ decision.

Jurisdiction. The court has jurisdiction of the parties and subject matter jurisdiction based upon alleged violations of the governing statute: the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1401 *et seq.* That legislation has provided federal money to qualified state and local agencies that adopt a policy assuring all handicapped children the right to a "free appropriate public education." *See* 20 U.S.C. § 1412 (1). Mandated schools are required to consider the needs of each handicapped child by means of an "individualized educational program" (IEP). *Id.* § 1414 (a)(5).

Like the ALJ, this court denies the defendants' challenge to jurisdiction based on plaintiffs' rental of an apartment in Nebraska during times relevant to the placement. The record as a whole demonstrates plaintiffs continued to reside in the Iowa school district during the school year; they were and are Iowa citizens

The court now addresses the merits of the plaintiffs' appeal. Plaintiffs contend defendants, The Lewis Central Community School District (District) and The Loess Hills Area Education Agency (AEA), have violated their rights and Sam's rights under the IDEA by failing to offer a full continuum of educational placement options, specifically including a special class in a regular public school. The agency decision upheld the action taken by the District and AEA and denied plaintiffs the relief in damages that they have sought.

Scope of review The court does not review the administrative record de novo, but instead decides whether the decision of the administrative law judge (ALJ) is supported by the preponderance of the evidence in the record of the administrative proceedings, as well as any additional evidence submitted on request of a party. 20 U.S.C. §1415 (e)(2). Here, the parties submitted the case to this court for review based solely on the agency administrative record. Counsel presented forceful oral argument on April 19, 2006, and the court has now completed its review of the extensive record. The court affirms the ALJ's agency decision in all respects.

Background facts. Sam was diagnosed with auditory neuropathy shortly after his birth in 1999. His family moved to Council Bluffs, Iowa in August of 2000; since then, they have lived within the Lewis Central Community School District. Sam received in-home services from an AEA early childhood specialist until September of 2001, when he was placed in a

preschool program at the Iowa School for the Deaf (ISD) on the outskirts of Council Bluffs. Sam had bi-weekly in-home visits from an AEA speech pathologist, and Sam had a cochlear implant in August of 2002. During the 2003-2004 school year, Sam attended an Omaha school in the morning with same-age peers who were also learning to speak and hear using both voice and sign language. In the afternoons, he attended ISD classes. In June of 2004 meetings were held concerning Sam's placement for the 2004-2005 school year. The Schultzes stated that Sam should be placed in an Omaha school for his kindergarten year. The District and AEA recommended an ISD program with integration into a Council Bluffs public school kindergarten program "for a portion of the day as determined by the team." Schultzes disagreed.

Consequently, during the 2004-2005 school year, the Schultzes paid \$3,104 in tuition for Sam's enrollment in a special classroom in a regular Omaha public school. The Schultzes rented an apartment in Omaha in lieu of paying the \$16,000 balance for out-of-state student tuition. They seek reimbursement for their expenses resulting from placing Sam in the Omaha school, contending that the ALJ made several errors in denying their claim after the Due Process hearing held in March and April of 2005.¹

Discussion

1. Plaintiffs have not demonstrated that the IDEA was violated by defendants' placement decision. Sam was entitled to a basic educational opportunity meeting his needs, a good but not the best conceivable school setting. The ALJ properly allowed the defendants to

¹ The court regrets the delays in achieving a final judicial decision in this case. The hearing before the ALJ was delayed for several months due to the parties' requests for continuance. Likewise, this court did not receive the parties' final briefs until February 28, 2006, and oral arguments of counsel received April 19 were forceful enough to require the court to spend nearly two more months studying the record and applicable law.

consider the district's financial resources as one factor defendants could consider in making the placement decision.

2. The IEP team meeting was adequate and neither procedurally nor substantively unfair. Absence of some teachers did not vitiate the proceedings. The ISD school personnel had adequate personal contact with Sam and his parents; some had been in contact with him for several years before they decided on placement.

3. The ALJ's credibility determinations are supported by the administrative record as a whole. For example, it was for the ALJ to decide whether Mrs. Schultz or team member Laurie Thies was more believable concerning whether the placement decision was made before the June 8, 2004 team meeting. The record supports Thies' view that the decision had not been predetermined. Indeed, the ALJ wrote a solid several-page decision setting forth detailed findings of fact on credibility issues.

4. The court agrees with the ALJ's determination that the IEP team listened to the parents' concerns and took them into account before making the final Iowa placement decision. The IEP proposed did not require that Sam be in a segregated facility for the entire day. The Nebraska facility was as segregated, or more segregated, than the IEP team had proposed.

5. Defendants did not violate the plaintiffs' rights by proposing placement in Iowa based on the program of the Iowa School for the Deaf in Council Bluffs. The ALJ properly denied the plaintiffs' challenges to the procedures and final decision of the IEP team. Sam's education in Iowa would have been adequate, satisfying the federal law's requirements, notwithstanding the parental plaintiffs' protests.

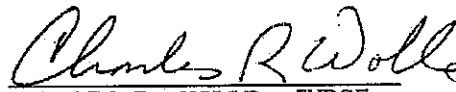
Summary. The court concludes, as did the ALJ, that plaintiffs meet the requisite

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education residency requirements necessary for this court to exercise subject-matter jurisdiction over this appeal. The preponderance of the evidence in the administrative record supports the ALJ's well-reasoned decision. The clerk of court shall enter judgment for defendants and against plaintiffs.

IT IS SO ORDERED.

Dated this 15th day of June, 2006.


CHARLES R. WOLLE, JUDGE
U.S. DISTRICT COURT